

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT F. BAKER,)	4:09CV3025
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
BILL OUREN, et al.,)	
)	
Defendants.)	

Plaintiff filed his Complaint in this matter on February 5, 2009. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [6](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#).

I. SUMMARY OF COMPLAINT

Plaintiff's Complaint names nine individual Defendants. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff sues these Defendants in their individual capacities. ([Id.](#)) Plaintiff is currently confined in the Plattsmouth County Jail, in Plattsmouth, Nebraska. ([Id.](#) at CM/ECF pp. 2-3.)

Condensed and summarized, Plaintiff alleges that his theft conviction was obtained by use of a coerced confession. ([Id.](#) at CM/ECF p. 3.) Specifically, Plaintiff alleges that "[o]fficers" told him they would jail his "pregnant girlfriend unless he took responsibility" for the crimes he allegedly committed. ([Id.](#)) Plaintiff also alleges his attorneys were ineffective because they "failed to have a hearing" about Plaintiff's coerced plea. ([Id.](#)) In addition, Plaintiff alleges malicious prosecution, defamation, conspiracy, and civil rights claims. ([Id.](#) at CM/ECF p. 1.) Plaintiff does not request any relief. ([Id.](#) at CM/ECF pp. 1-15.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. *See* [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

Therefore, where a pro se plaintiff does not set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible, their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 127 S. Ct. 1955, 1974 (2007) (overruling [Conley v. Gibson](#), 355 U.S. 41 (1967), and setting a new standard for failure to state a claim upon which relief may be granted). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See* [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), 294 F.3d 1043, 1043-1044 (8th Cir. 2002) (citations omitted).

Liberally construed, Plaintiff here alleges federal constitutional claims. To state a claim under [42 U.S.C. § 1983](#), a plaintiff must allege a violation of rights protected by the United States Constitution or created by federal statute and also must show that the alleged deprivation was caused by conduct of a person acting under color of state law. [West v. Atkins](#), 487 U.S. 42, 48 (1988); [Buckley v. Barlow](#), 997 F.2d 494, 495 (8th Cir. 1993).

III. DISCUSSION OF CLAIMS

Claims relating to the validity of an individual's incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in Preiser v. Rodriguez, 411 U.S. 475 (1973) and Heck v. Humphrey, 512 U.S. 477 (1994), if success on the merits of a civil rights claim would necessarily implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use 42 U.S.C. § 1983 to cast doubt on the legality of his conviction or confinement. See Heck, 512 U.S. at 486-87.

Here, Plaintiff's alleges that his conviction was obtained by use of a coerced confession and that his attorneys were ineffective. (Id. at CM/ECF p. 3.) These claims necessarily implicate the validity of Plaintiff's conviction and continued confinement. As set forth above, the court cannot address these claims in an action brought pursuant to 42 U.S.C. § 1983. However, the court will dismiss Plaintiff's claims without prejudice to reassertion in a habeas corpus or similar proceeding.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (filing no. 1) is dismissed without prejudice to reassertion in accordance with this Memorandum and Order.
2. A separate judgment will be entered in accordance with this Memorandum and Order.

March 30, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge